

### **REMARKS/ARGUMENTS**

Reconsideration of this application, in view of the foregoing amendment and the following remarks and arguments, is respectfully requested.

Claims 28-30 are currently pending in this divisional application, with Claims 1-27 having been canceled in conjunction with the filing of the application (see page 2 of applicants' June 23, 2003 Rule 53(b) Divisional Application Transmittal Letter). By the foregoing amendment, Claim 28 has been revised, and new Claims 31-33 have been added to afford the applicants the breadth and scope of patent protection to which they are entitled. Accordingly, Claims 28-33 are now present in this divisional application for consideration and allowance.

In his December 17, 2003 Office Action, the Examiner made various rejections of Claims 1-27. These rejections are seen to be moot in view of the cancellation of these claims prior to the examination of this application. Additionally, the Examiner objected to applicants' specification in view of uninitialed alterations made to Claims 17, 18 and 25. This objection is also seen to be moot since these claims were canceled prior to the examination of this application and are therefore not part of the application.

Claims 28-30 stand rejected under 35 USC §102(b) as being anticipated by Christensen (EP0295922), and Claim 28 stands rejected under 35 USC §102(b) as being anticipated by U.S. Patent 5,887,652 to Beck et al. These rejections are respectfully traversed for the following reasons.

Via amended independent Claim 28, each of applicants' Claims 28-30 specifies a formation testing apparatus in which a waste chamber portion thereof is opened in response to pressure in an annulus positioned **between two packers** and extending between the apparatus and an associated wellbore.

The Christensen reference discloses a sampler chamber 22 which is opened by lowering the pressure in an annulus 96 disposed above a **single** packer 20 after such single packer is set. Christensen fails to disclose an annulus **between two packers**, with pressure in such annulus being utilized to open a waste chamber as recited in applicants' Claims 28-30. Accordingly, none of applicants' Claims 28-30 is anticipated by the Christensen reference.

In Beck et al a **single** packer 20 is utilized to form below such single packer an annulus 52 from which well fluid flows into the drill pipe anchor portion 26 below the packer 20 via a port 50 in the anchor portion 26. Accordingly, the Beck et al sampler 36 is not opened in response to fluid pressure in an annulus defined between two packers as required by Claim 28. It is therefore respectfully submitted that Claim 28 is not anticipated by the Beck et al reference.

Via independent Claim 31, each of applicants' new Claims 31-33 recites, in a formation testing apparatus, a tubular string disposed above a packer, and a waste chamber opened in response to pressure in an annulus formed between the apparatus and the wellbore after the packer is set, the waste chamber receiving fluid therein after the fluid initially flows into the tubular string at a location thereon disposed **above** the packer.

None of the references currently being relied upon by the Examiner teaches or suggests this combination of limitations. For example, in each of the Christensen and Beck et al references, well fluid to be sampled initially enters their tool string portions at locations **below** their respective packers 20 and 22. Accordingly, new Claims 31-33 are seen to be allowable over the art of record.

In view of the foregoing amendment, remarks and arguments, all of the claims currently pending in this application are now seen to be in a condition for allowance. A Notice of Allowance of Claims 28-33 is therefore earnestly solicited.

The Examiner is hereby requested to telephone the undersigned attorney of record at 972/516-0030 if such would further or expedite the prosecution of the instant application.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450,

on FEBRUARY 19, 2004  
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